(1) SINGLE BENCH 4

CF ~~1007~~
20/-

CIVIL MATTER
SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR (C.G.)

WRIT PETITION (C) NO. 5746 OF 2006

PETITIONER
PLAINTIFF

Sunderlal Kashyap, aged about 54 Years, Son of Shri Mahadev Prasad Kashyap, Caste Kachhi, Resident of Telipara Bilaspur, District Bilaspur (C.G.).

5730/06
P.R. No. Shyamlal Sharma
Presented on 16/10/06

VERSUS

RESPONDENTS
DEFENDANTS

1. Shri Mahadev Prasad Kashyap, aged about 82 years Son of Shri Buddhu Prasad Kashyap;

2. Shri Shyamlal Kashyap, aged about 46 years Son of Shri Mahadev Prasad Kashyap;

3. Shri Mishrilal Kashyap, aged about 38 years Son of Shri Mahadev Prasad Kashyap;

All residents of Telipara Bilaspur Tahsil and District Bilaspur (C.G.).

4. Shri Subhash Agrawal, aged about 50 years Son of Not Known, Director/Proprietor Gaytri Medical Agency Telipara Bilaspur (C.G.).

5. The Sub Registrar, Registration Office, Bilaspur (C.G.).

OATH COMMISSIONER APARNA MALVIYA Bilaspur 16/10/06

RE-COPY 16/10/06 C.R.A. to A.G. BILASPUR

XI-HC-78

28

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... W.P.(C) No. 5746 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

29.11.2006

Shri Malaya Kumar Bhaduri, learned counsel for the petitioner.

Heard on admission.

By this Writ Petition filed under Article-227 of the Constitution of India, the petitioner, who was plaintiff before the trial Court, has challenged the validity, legality and propriety of order dated 06.10.2006 passed in Misc. Civil Appeal No.28/2005 by the First Additional District Judge, Bilaspur. The aforesaid Miscellaneous Appeal was filed against the order dated 02.12.2005 passed in Civil Suit No.144-A/2005 by the Second Civil Judge Class-II, Bilaspur, whereby, the learned trial Judge rejected the application filed by the plaintiff under Order-39 Rule-1 & 2 of the Code of Civil Procedure.

Brief facts are that the plaintiff filed a suit for declaration, partition and permanent injunction. The defendant No.1 is the father of the plaintiff and defendant Nos.2 & 3 are his real brothers. The defendant No.4 is said to be proposed purchaser. The plaint allegations are that the suit properties were the joint family property belonging to plaintiff and defendants No.1 to 3 in which the plaintiff is having 1/4th share. The cause of action arose, when the plaintiff came to know that the defendant No.1 is trying to alienate some portion of the suit property to defendant No.4, which, according to plaintiff he could not do unless the partition takes place in the family. During the pendency of the suit, the plaintiff filed an application for temporary injunction restraining the defendant No.1 to alienate the suit property in the aforesaid manner. The defendants No.1, 2 & 3 raised the plea that the entire suit properties are the self acquired properties of the father-defendant No.1, therefore, there is no question of partition in his life time.

P.T.O.

Contd. 2

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C).No.5746/ **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

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The trial Court dismissed the aforesaid application holding that there is no prima facie case in favour of the plaintiff as the most of the properties were the self acquired properties recorded in the name of defendant No.1, who is the father of the plaintiff. Against the order of rejection of injunction application, the plaintiff filed an appeal before the lower Appellate Court and the Appellate Court also took the same view and dismissed the appeal.

For the sake of arguments, even if we take that nature of properties were joint and the status of the plaintiff is that of a co-parcener, no injunction can be granted in favour of co-parcener against making alienation by another co-parcener on the ground that the partition has not taken place so far. In co-parcenery property, a co-parcener is always having a right to make alienation of his own share. Moreover, during the pendency of the suit, if the other co-parcener makes alienation which exceeds his rights, the right and interest of remaining co-parceners is always protected under the doctrine of *lis-pendense* if such an exigency arises.

There appears to be no infirmity in the orders passed by the Courts below. The petition has no merit and it is dismissed at the motion stage itself.

In view of the above, M.(W.)P.No.4355/2006 for grant of temporary injunction stands dismissed.

Sd/-
Sunil Kumar Sinha
Judge

P.T.O.